

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

BRIAN LYNGAAS, D.D.S.,
individually and as the
representative of a class of
similarly situated persons,

Plaintiff,

Case No. 17-10910

v

CURADEN AG, et al.,

HON. MARK A. GOLDSMITH

Defendants.

FINAL JUDGMENT

Plaintiff Brian Lyngaas, D.D.S., brought the present action against Defendants Curaden AG and Curaden USA on behalf of himself and the following class: “All persons who were successfully sent one or more facsimiles in March 2016 offering the Curaprox ‘5460 Ultra Soft Toothbrush’ for ‘.98 per/brush’ to ‘dental professionals only’” (Dkt. 89). The Court conducted a bench trial on September 18 and 19, 2019, and entered its opinion and order setting forth its findings of fact and conclusions of law (Dkt. 129), on November 21, 2019. Pursuant to Federal Rules of Civil Procedure 23(c)(3) and 54(a), the Court now enters a final judgment as follows:

1. Judgment is entered in favor of Lyngaas against Curaden USA, in the amount of \$1,000 for statutory damages under 27 U.S.C. § 227(b)(3)(B).

2. Judgment is entered in favor of the class against Curaden USA, in an amount to be determined through the course of a claims administration process, which is established as follows:

a. The claims administrator shall be Class-Settlement.com, 20 Max Avenue, Hicksville, NY 11801.

b. The claims administrator shall distribute to potential class members notices of judgment, claim forms and affidavits, and notices of additional information in the same

manner that class notice was disseminated. Specifically, these documents shall be distributed to each of the fax numbers identified on the summary report logs as having received one or more of the faxes at issue in this case. For each fax that cannot be sent successfully after three attempts, notice shall be sent by U.S. Mail to the address last known or suspected to have been associated with that fax number.

c. The approved notice of judgment, claim form and affidavit, and notice of additional information to be distributed to potential class members are attached as Exhibit 1 to this judgment.

d. Claimants who wish to collect damages must submit a completed claim form and affidavit within sixty days of the claims administrator's distribution of the claim form and affidavit.

e. The claims administrator shall receive completed claim forms and affidavits and shall make copies available to the parties. The parties shall verify the information contained in each claimant's claim form and affidavit with the information reflected on the "target lists"—documents provided by Curaden USA to AdMax Marketing identifying fax numbers to be targeted in the fax broadcasts. See Target Lists, Pl. Trial Exs. 17, 18, 20, 21 (Dkts. 121-9, 121-10, 121-12, and 121-13). The parties shall then confer regarding the validity of each claim.

f. If a party disputes the validity of a claim, a summary decision process will be established by the claims administrator. The summary decision process shall afford Curaden USA a reasonable opportunity to raise objections to the evidence supplied by each claimant and to present its own counter-evidence. However, Curaden USA shall not be entitled to discovery or trial regarding the validity of individual claims.

g. If a claim form and affidavit is complete and consistent with the information reflected in the target lists, the claims administrator shall grant it. If a claim form and

affidavit is inconsistent with the information in the target lists or is incomplete or facially deficient, the claims administrator shall deny it. The claims administrator, however, shall afford an individual claimant a second chance to complete an incomplete form and, under appropriate circumstances, the claims administrator may seek additional specific information from a particular claimant.

h. For each claim deemed valid, the class member shall be entitled to receive \$500 per unsolicited fax received from Curaden USA, less a deduction for attorney fees and costs as later determined by the Court.

i. Within thirty days after the claims administrator certifies in writing that the determination of claims is completed, either party may file a motion to reopen the case to seek a ruling from the Court regarding any objections to the claims administrator's rulings.

j. Class counsel shall fund the upfront costs related to the claims administration process.

3. Class counsel may seek an award of attorney fees and costs, including an incentive award to Lyngaa in the following manner:

a. Any motion seeking an award of attorney fees and costs to class counsel, including an incentive award to Lyngaa, must be filed within twenty-eight days after entry of this final judgment, pursuant to Federal Rules of Civil Procedure 23(h), 54(a), and 54(d)(2).

b. Pursuant to Federal Rule of Civil Procedure 23(h)(1), the notice of additional information attached as Exhibit 1 to this judgment shall contain notice of any motion seeking an award of attorney fees, costs, or an incentive award. Distribution of this notice must occur within two days of filing the motion, in the manner described above in Section 2(b).

c. Pursuant to Federal Rules of Civil Procedure 23(h)(2) and 54(d)(2)(C), class members shall have the opportunity to object to any motion seeking attorney fees, costs, or an incentive award within forty-five days of the claims administrator's distribution of notice of the motion. To preserve and assert their objections, class members must, by that date, send to the Clerk's Office a letter including the case caption; identifying the claimant's name, address, phone number, and fax number at which faxes from Curaden USA were received; and stating the basis for the objection.

d. If the Court determines that a hearing is necessary to resolve any motion seeking attorney fees, costs, or an incentive award, or any objections to such a motion, the Court will provide notice of that hearing to class counsel.

4. Judgment of no cause of action is entered in favor of Curaden AG against Lyngaa and the class, except as to those who have opted out of the class.¹

5. The Court retains jurisdiction to enforce this Judgment. The Court's retention of jurisdiction over this action shall in no way affect the finality of this judgment.

SO ORDERED.

Dated: January 30, 2020
Detroit, Michigan

s/Mark A. Goldsmith
MARK A. GOLDSMITH
United States District Judge

¹ The following nine dental practices have requested exclusion from the action: (1) Lincoln Common Dental, (2) Dale S. Uyeda, D.D.S., (3) Dental Care on Golf Links, (4) Pound & Pound Family Dentistry, (5) Brady Dental Group, (6) O. Smile Dentistry, (7) Terry B. Adams, Orthodontics, (8) Daniel Family Dentistry, and Indian Health Service. Merryman Decl. ¶ 5 (Dkt. 117).

Exhibit 1

Please deliver this notice to the person who makes decisions for your company or business:

If you wish to receive money as part of the recovery in this case, the Court has ordered that you must submit the attached Claim Form and Affidavit by <insert date>, 2020.

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION**

BRIAN LYNGAAS, D.D.S., individually and as)
the representative of a class of similarly-)
situated persons, Plaintiff,) Case No. 17 CV 10910
v.)) Hon. Mark A. Goldsmith
CURADEN USA, INC., Defendant.)

NOTICE OF JUDGMENT

To: All persons who were successfully sent one or more facsimiles (“faxes”) in March 2016 offering the Curaprox “5460 Ultra Soft Toothbrush” for “.98 per/brush” to “dental professionals only.”

The Court has determined that Curaden USA, Inc. (“Curaden USA”) sent two advertisements by fax in March 2016 in violation of the Telephone Consumer Protection Act. All persons who received either or both of those faxes without their prior express permission can now claim damages of \$500 for one fax or \$1,000 for two faxes received, less a deduction for attorney fees and costs as later determined by the Court. Records in the case indicate that you or your company may qualify. But you must complete and submit the Claim Form and Affidavit below to collect your damages for receiving the faxes.

To see the faxes and submit your claim go to www.curfax.com and enter your unique user name and pin.

USER NAME: <insert here>

PIN: <insert here>

CLAIM FORM AND AFFIDAVIT

Lyngaas v. Curaden USA, Case No. 17 CV 10910

1. **Please write your name:** _____
2. **Please complete the following information:**
 - a. **Business/Company Name:** _____
 - b. **Business/Company Address:** _____
 - c. **Business/Company Fax Number:** _____
 - d. **Business/Company Phone Number:** _____
 - e. **Did you receive a fax advertisement from Curaden USA, Inc., on March 8, 2016 (circle "Yes" or "No" below)?**

YES	NO
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3. **You must sign this Claim Form and Affidavit (electronically or on paper) and submit it by <insert date>, 2020. Please complete all information in this section.**

I verify under penalties of perjury under the laws of the United States of America that the foregoing information I have provided is true and correct and the person and/or company identified above was sent a fax by Curaden USA, which was not expressly invited or permitted.

Signed on _____
(write today's date) _____
(Sign your name here) _____

Telephone number where you can be reached: _____

Email address where you can be reached: _____

You may submit your Claim Form and Affidavit in any of these four ways:

- a. Submit this form electronically at www.curfax.com **OR**
- b. Fax this form to: <fax number for claims > **OR**
- c. E-Mail this form to: info@curfax.com **OR**
- d. Mail this form to: Class-Settlement.Com, 20 Max Avenue, Hicksville, NY 11801

NOTICE OF ADDITIONAL INFORMATION

A. Why did you receive this notice?

The Court has determined that Curaden USA violated the Telephone Consumer Protection Act, 47 U.S.C. § 227, by sending advertisements by fax.

The Court has ordered that all persons who received Curaden USA's faxes on March 8, 2016 and/or March 28, 2016 without their prior express permission must complete and return the attached Claim Form and Affidavit to claim money, \$500 for one fax or \$1,000 for two faxes received, less a deduction for attorney fees and costs as later determined by the Court.

You were previously notified about this pending class action lawsuit. Your name and fax number were identified as a possible recipient of Curaden USA, Inc's fax advertisement(s) in documents at issue in the case. The Court ruled that the documents did not conclusively establish your receipt of the faxes or lack of permission to send them to you. Consequently, you must submit a Claim Form and Affidavit to establish that you received one or more of them and that you didn't give permission to Curaden USA, Inc. to send you the faxes. If you received one or more of these faxes, then you are a member of the Class defined above.

B. You must complete and submit the Claim Form and Affidavit to be entitled to receive money for receiving one or more advertisements by fax from Curaden USA.

You must complete all fields of the attached Claim Form and Affidavit and must date and sign the verification that all information you provided is true and correct. You must then either submit it online at www.curfax.com or send it by fax, email, or postal mail to the Claims Administrator (as detailed in Section 3 of the Form).

C. The Claims Administrator

Class-Settlement.com is the Claims Administrator. To reach Class-Settlement.com about this matter, you can call or write to: Class-Settlement.com, 20 Max Avenue, Hicksville, NY 11801, email to info@curfax.com, or call toll free (800) 982-1241.

D. Class Counsel

The Court appointed Bock, Hatch, Lewis & Oppenheim, LLC and Shenkan Injury Lawyers, PC as Class Counsel to represent the Class defined above. Class counsel have requested that the Court withhold one-third of each payment to claimants for their attorney fees in this matter, and also withhold a portion of each payment to reimburse their litigation expenses in this matter. If the Court approves those requests, and the Claims Administrator approves your claim, you will be paid \$500 for one fax or \$1,000 for two faxes received, less a deduction for attorney fees and costs as later determined by the Court. Class Counsel have also requested that the Court permit them to pay Brian Lyngaas, D.D.S. \$15,000 from their attorney fees for serving as the class representative.

A copy of Class Counsel's request for fees and expenses, including the incentive award, is available for review in the Court file for the case, or at www.curfax.com. If you would like to object to any of these requests, then you must do so by sending a letter to the Clerk's Office of the United States District Court, 231 W. Lafayette Blvd. Detroit, MI 48226, including the case caption, stating the basis for your objection and identifying your name, address, phone number and the fax number at which you received the Curaden USA faxes, post-marked no later than <insert date>, 2020. If the Court determines a hearing is necessary to resolve objections to Class Counsel's request, Class Counsel will send notice of the time and date of the hearing.

E. How can I learn more about this lawsuit?

You can view and copy some of the papers from this case at no charge at www.curfax.com or at your own expense in the Clerk's Office of the United States District Court, 231 W. Lafayette Blvd. Detroit, MI 48226. **Do not contact the Judge, the Judge's staff, or the Clerk of the Court because they cannot answer your questions or give you advice about this case.** If you have any questions, you can contact Phillip Bock, one of the attorneys for the Class, at 312-658-5501. You can send questions by email to phil@classlawyers.com, or by US Mail to Bock, Hatch, Lewis & Oppenheim, LLC, 134 N. La Salle St., Ste 1000, Chicago, IL 60602.

BY ORDER OF THE COURT - HON. MARK A. GOLDSMITH